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10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 JOHN DOE, individually and, on behalf of a
13 class of those similarly situated,

14 Plaintiff,

15 Case No.: 3:13-cv-00165-LRH-WGC

16 vs.

17 ELKO COUNTY, MARK TORVINEN, in his
18 official capacity as District Attorney for Elko
19 County,

20 Defendant.

21 **DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS**

22 Defendants, Elko County and Mark Torvinen (collectively "Defendants"), by and through
23 their counsel of record, Nick D. Crosby, Esq., with the law firm of Marquis Aurbach Coffing,
24 hereby file their Reply in Support of Motion to Dismiss. This Reply is made and based upon the
25 attached Memorandum of Points and Authorities, all papers and pleadings on file herein, and any
26 oral argument allowed at the time of the hearing.

27 Dated this 3 day of December, 2013.

28 MARIQUIS AURBACH COFFING

29 By

30 Nick D. Crosby, Esq.
31 Nevada Bar No. 8996
32 10001 Park Run Drive
33 Las Vegas, Nevada 89145
34 Attorney(s) for Defendants

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE PLAINTIFF'S PROSPECTIVE DECLARATORY AND INJUNCTIVE RELIEF CLAIMS MUST BE DISMISSED.

In the Opposition, the Plaintiff admits that his prospective claims for injunctive and declaratory relief are moot by virtue of the Legislature's vote to repeal Nevada Revised Statute 201.195. (Opp., p. 1, n. 1). As such, all prospective aspects of the Complaint should be dismissed per admission by the Plaintiff that the same are moot.

II. THE CLAIMS AGAINST TORVINEN ARE REDUNDANT AND IMPERMISSIBLE.

Initially, the Defendants asserted Torvinen was entitled to prosecutorial immunity for the claims against Torvinen. The Plaintiff asserted that because the claims are alleged against Torvinen solely in his official capacity as District Attorney of Elko County, prosecutorial immunity is not available. (Opp. at pp. 4-5). While the Defendants concede this point, the claims against Torvinen, nonetheless, must be dismissed.

The Supreme Court has long held that claims against a government official, solely in his official capacity, are not necessary when the employing government entity is also named as a defendant in the action. See Kentucky v. Graham, 473 U.S. 159, 167 n. 14 (1985). In this matter, the Plaintiff sued Torvinen only in his official capacity and sued the County as well. As such, the inclusion of Torvinen “only leads to a duplication of documents and pleadings, as well as wasted public resources for increased for increased attorneys fees.” Luke v. Abbott, 954 F. Supp. 202, 204 (CD. Cal. 1997). As such, all claims against Torvinen should be dismissed.

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III. CONCLUSION

Given the foregoing, all prospective claims alleged in the Complaint should be dismissed, as the same, by admission of Plaintiff, are moot. Further, all claims against Torvinen should be dismissed, as the same are unnecessary and redundant because the County is also named as a Defendant.

Dated this 3 day of December, 2013.

MARQUIS AURBACH COFFING

By

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